

Annex C

Extract from correspondence with the Covid Inquiry

05 April 2022

Dear Lady Hallett,

ICO response to consultation on Covid-19 Inquiry draft Terms of Reference

I am writing in response to the consultation you are conducting on the draft Terms of Reference of the UK Covid 19 Inquiry.

The Information Commissioner's Office (ICO) is responsible for regulating data protection and freedom of information law; the following suggestions and questions on the draft terms of reference therefore reflect my statutory remit and how it interacts with the public interest. My predecessor has already set out some key learning points related to the role of data protection and freedom of information during the pandemic¹⁸.

Record keeping during the pandemic

I believe that the quality and standard of record keeping during the pandemic will be an important question when the Inquiry addresses wider issues of decision-making, particularly around policy and procurement. My office is currently undertaking an investigation into the use of private communication channels and the implications for record keeping and freedom of information¹⁹. Openness and transparency can only work effectively with the underpinning of effective governance and record keeping. It is also vital that this keeps pace with digital technology. The accelerated use of technology during the pandemic exposed the risks.

I also highlight that that under s46 of the Freedom of Information Act 2000 (FOIA), the Secretary of State is required to issue a Code of Practice which provides a framework for public authorities to manage information and records and to comply with their obligations under FOIA and other relevant legislation, such as the Public Records Act 1958. S.2.3.2 of the Code makes clear that public bodies should keep information if it 'needs it for reference or

¹⁸ COVID-19 and information rights: reflections and lessons learnt from the Information Commissioner (November 2021) <https://ico.org.uk/media/about-the-ico/documents/4019157/covid-19-report.pdf>

¹⁹ Blog: ICO launches investigation into the use of private correspondence channels at the Department of Health and Social Care (July 2021) <https://ico.org.uk/about-the-ico/news-and-events/blog-ico-launches-investigation-into-the-use-of-private-correspondence-channels/>

accountability purposes’ and also in ‘exceptional’ circumstances including where there may be a public inquiry.

I would therefore suggest amending the second bullet of the first section of the Terms of Reference to read ‘how decisions were made, communicated, **recorded** and implemented’.

Transparency

The Inquiry might also want to consider how the cross cutting theme of transparency can be reflected in the Terms of Reference. The 2011 UK Influenza Pandemic Preparedness Strategy noted that ‘openness and transparency is central to an effective pandemic response’²⁰. This will therefore be relevant to the bullet point above, but will also be an important consideration when looking at the use of personal data in developing and delivering key public health responses, the delivery of government procurement contracts and the safeguarding of public funds.

The Terms of Reference specifically mentions *testing, contact tracing and isolation*, but doesn’t refer to *covid status certification*. I would recommend referencing this explicitly on the face of the Terms of Reference as this was also one of the key data driven public health responses during the pandemic and should be included as part of the analysis on ‘*the availability and use of data and evidence*’. It will also be relevant when the Inquiry looks at the impact on hospitality, leisure and travel. The ICO also recently took enforcement action in respect of the scheme in Scotland²¹.

²⁰ [UK Influenza Pandemic Preparedness Strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544442/UK_Influenza_Pandemic_Preparedness_Strategy.pdf)

²¹ ICO reprimands Scottish Government over need to be upfront about NHS Scotland COVID Status app’s use of people’s details (February 2022) <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2022/02/ico-reprimands-scottish-government-over-need-to-be-upfront-about-nhs-scotland-covid-status-app-s-use-of-people-s-details/>